

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

CHARLES A. EVANGELISTA,)	
Plaintiff)	
)	
v.)	CIVIL ACTION NO.
)	05-CV-10311-MLW
SHANE MARCOTTE,)	
JASON FANION,)	
DANIEL FALLON, III,)	
JONATHAN COTTER,)	
JAMES JOHNSON,)	
CARL SUPERNOR, and)	
THE CITY OF WORCESTER,)	
Defendants)	

JOINT STATEMENT UNDER LOCAL RULE 16.1(D)

A. Summary Of The Parties' Positions:

The Plaintiff's Position:

This civil rights action, based on allegations of the use of excessive force by the Worcester Police Department, arises out of an incident occurring in the detention area of the Worcester Police Department on March 16, 2003. The Plaintiff, Charles A. Evangelista ("Evangelista"), alleges that, during the booking process following his arrest on disorderly conduct charges, he was dragged through a hallway by two Worcester Police officers, the Defendants Shane Marcotte and Jason Fanion, and was then struck in his abdomen by the shod foot of the Defendant, Shane Marcotte, with force so great that it caused his bladder to rupture. Evangelista further alleges that the incident was witnessed by several other members of the Worcester Police Department, who failed to intervene or even to report the incident. In addition, Evangelista alleges that the beating was captured on videotape and that, following the incident, after some or all of the

officers involved realized that their actions were shown on the tape, the videotape of the beating of Evangelista was erased.

Following the incident, while Evangelista remained in custody, his repeated requests for medical assistance were ignored by the Worcester Police. After Evangelista posted bail and was released from custody, he was brought by a friend to a nearby hospital, where he underwent emergency surgery for a ruptured bladder.

Evangelista advances civil rights claims based on the Fourth, Fifth, Sixth Amendments to the United States Constitution and 42 U.S.C. §1983, and for assault and battery against defendant Marcotte, and asserts further civil rights claims against the other individual defendants, based upon their collective failure to intervene and to report police misconduct, and for their actions in causing the videotape of the incident to be erased. In addition, Evangelista has asserted a direct civil rights claim against the City of Worcester based upon its failures in the supervision and discipline of Worcester Police officers. Evangelista seeks recovery for the injuries he sustained, his lost income and benefits, damages for emotional distress, damage to his professional and personal reputation, and punitive damages. Evangelista also seeks an award of attorney's fees and costs, as provided for by 42 U.S.C. §1988.

The Defendants' Position:

The Defendants' position is that Plaintiff was arrested for creating a disturbance at a Worcester bar on March 16, 2003. During the booking procedure at the Worcester Police Department after his arrest, Plaintiff was intoxicated and uncooperative. Plaintiff slid down a wall onto the floor of the fingerprinting/photographing room, and would not stand back up to be fingerprinted or photographed. Booking room officers were forced to drag the 6' 3", 260 pound Plaintiff to the hallway outside his cell, whereupon he entered his cell. At no time was

excessive force applied to Plaintiff. At no time was Plaintiff heard by booking room officers to request any medical assistance. The Defendants deny Plaintiff's claim that the booking videotape was erased after the booking room officers allegedly realized the incident had been taped. The booking videotape at the time of the Plaintiff's release did not reveal any injury on his person, and the videotape at the time shows Plaintiff as not making any complaints about any injury.

B. The Parties' Joint Discovery Plan.

A joint discovery plan in the form of a Proposed Scheduling Order complying with Local Rule 16.1(D)(1) is attached hereto by the Plaintiff, Charles A. Evangelista, and the Defendants, Shane Marcotte, Jason Fanion, Daniel Fallon, III, Jonathan Cotter, James Johnson, Carl Supernor and the City of Worcester. The parties aver that:

- (a) this proposal conforms with Fed.R.Civ.P. 26(b);
- (b) the desirability of phased discovery has been considered and the parties do not consent thereto;

C. Proposed Schedule for Filing Motions.

The accompanying Proposed Scheduling Order required by Local Rule 16.1(D)(1) contains a proposed schedule for the filing of motions.

D. Local Rule 16.1(D)(3) Certifications

Certifications complying with Local Rule 16.1(D)(3) will be filed forthwith by all parties.

Respectfully Submitted,

The Plaintiff,

CHARLES A. EVANGELISTA

By his attorneys:

William T. Harrington

John T. Landry, III (BBO No. 544388)
William T. Harrington (BBO No. 564445)
Glynn, Landry, Harrington & Rice, LLP
10 Forbes Road, Suite 270
Braintree, MA 02184
(781) 356-1399

Dated: August 31, 2005

The Defendants,

SHANE MARCOTTE, JASON FANION,
DANIEL FALLON, III, JONATHAN
COTTER, JAMES JOHNSON, CARL
SUPERNOR and the CITY OF
WORCESTER

By their attorneys:

David M. Moore
City Solicitor

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City Hall, Room 301
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PROPOSED JOINT PRE-TRIAL SCHEDULING ORDER

Now come the Plaintiff, Charles A. Evangelista, and the Defendants, Shane Marcotte, Jason Fanion, Daniel Fallon, III, Jonathan Cotter, James Johnson, Carl Supernor and the City of Worcester, and, in accordance with the Scheduling Conference Order of this Court, hereby jointly submit the following Proposed Joint Pre-Trial Schedule:

1. The parties will make the Disclosures required by Fed. R. Civ. P. 26(a)(1) on or before October 7, 2005.
2. The parties will serve all written discovery by December 6, 2006.
3. The parties will complete all depositions of fact witnesses, including Rule 30(b)(6) witnesses, on or before March 31, 2006.
4. The Plaintiff will designate experts and disclose expert information in accordance with Fed. R. Civ. P. 26(a)(2) by May 1, 2006. The Defendants will designate experts and disclose expert information in accordance with Fed. R. Civ. P. 26(a)(2) by June 1, 2006. Rebuttal experts will be designated and their

information disclosed in accordance with Fed. R. Civ. P. 26(a)(2) by June 15, 2006.

5. Plaintiff's trial experts, including rebuttal experts, will be deposed by July 14, 2006. Defendants' trial experts will be deposed by August 1, 2006.
6. Dispositive motions shall be filed by September 15, 2006. Oppositions to dispositive motions will be due four (4) weeks after dispositive motions are filed.
7. The parties propose that a final pre-trial conference be scheduled on November 15, 2006, or at such other time convenient to the Court.
8. The parties propose that the trial be scheduled during the month of December 2006, or at such other time convenient to the Court.

Respectfully Submitted,

The Plaintiff,

The Defendants,

CHARLES A. EVANGELISTA

SHANE MARCOTTE, JASON FANION,
DANIEL FALLON, III, JONATHAN
COTTER, JAMES JOHNSON, CARL
SUPERNOR and the CITY OF
WORCESTER

By his attorneys:

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AGENDA OF MATTERS TO BE DISCUSSED AT SCHEDULING CONFERENCE

Counsel for the Plaintiff, Charles A. Evangelista, and the Defendants, Shane Marcotte, Jason Fanion, Daniel Fallon, III, Jonathan Cotter, James Johnson, Carl Supernor and the City of Worcester, hereby submit the following agenda of matters to be discussed at the Scheduling Conference:

1. The parties' Joint Statement Under Local Rule 16.1(D).
2. The parties' proposed Joint Pre-Trial Scheduling Order.

CHARLES A. EVANGELISTA

SHANE MARCOTTE, JASON FANION,
DANIEL FALLON, III, JONATHAN COTTER,
JAMES JOHNSON, CARL SUPERNOR and the
CITY OF WORCESTER

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